

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 165 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

STATE OF GUJARAT

Versus

MUSTUFAKHAN BISMILLAKHAN PATHAN

Appearance:

Shri S.T. Mehta, Additional Public Prosecutor, for
the appellant - State.

Shri M.H. Barejia, Advocate, for the Respondent -
accused (Absent).

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 17/10/96

ORAL JUDGEMENT

The judgment and order of conviction passed by
the learned Metropolitan Magistrate of Court No.7 at
Ahmedabad on 27th January 1983 in Criminal Case No.819 of

1982 is under challenge in this appeal only for the limited purpose of adequacy of sentence under Section 377 of the Code of Criminal Procedure, 1973 (the Cr.PC for brief). Thereby the learned trial Magistrate convicted the respondent - accused of the offence punishable under Section 324 of the Indian Penal Code, 1860 (the IPC for brief) and sentenced him to fine of Rs.75/- in default imprisonment for 15 days and also of the offence punishable under Section 135 (i) of the Bombay Police Act, 1951 (the Act for brief) and sentenced him to fine of Rs.20/- in default simple imprisonment for 10 days.

2. It is not necessary to set out in detail the facts giving rise to this appeal. It may be sufficient to note that the respondent - accused was charged with the offences punishable under Sections 324 and 504 of the IPC and Section 135 (i) of the Act for causing injuries to Latifbhai Abdulbhai and his father Abdulbhai with a razor and abusing them with filthy words at about 10.30 a.m. on 8th February 1982 near Deluxe Hair Dresser situated at Kalupur at Ahmedabad. The chargesheet against the respondent - accused was submitted in Court No.7 of the Metropolitan Magistrate's Court at Ahmedabad on 4th May 1982. The charge against the accused was framed on 18th August 1982 at Exh.3 on the record of the trial. He did not plead guilty to the charge. Thereupon, he was tried. After recording the prosecution evidence and after recording the further statement of the respondent - accused under Section 313 of the Cr.PC and after hearing arguments, by his judgment and order passed on 27th January 1983, the learned Metropolitan Magistrate of Court No.7 at Ahmedabad convicted the respondent accused of the offence punishable under Section 324 of the IPC and sentenced him to fine of Rs.75/- in default imprisonment for 15 days and also of the offence punishable under Section 135 (i) of the Act and sentenced him to fine of Rs.20/- in default simple imprisonment for 10 days. The inadequacy of sentence aggrieved the prosecution agency. It has therefore invoked the appellate jurisdiction of this court under Section 377 of the Cr.PC for enhancement of the sentence.

3. In view of Section 377 (3) of the Cr.PC, the respondent - accused can plead for his acquittal or even for the reduction of the sentence. Learned Advocate Shri Barejia for the respondent - accused has however not chosen to remain present. This court has received no assistance from learned Advocate Shri Barejia for the respondent - accused on this score. However, in view of the binding ruling of the Supreme Court in the case of BANI SINGH v. STATE OF U.P. reported in 1996 Supreme

Court Cases (Cri.) at page 848, this court will have to decide the matter on merits after perusing the record of the case whether or not any assistance is received from the learned Advocate for the respondent - accused.

4. I have gone through the evidence on record. It becomes clear that the learned trial Magistrate has carefully scanned and scrutinized the evidence on record and has recorded the finding of guilt against the respondent - accused as a result thereof. Both the injured victims have been examined and their injuries have been certified by the Medical Officer examining and treating them. It may be mentioned that Dr. Ajay Patel who examined the father of the complainant was not available for giving his oral testimony as he had gone abroad. That should however not weaken the case of the prosecution as the medical evidence on record would clearly corroborate the say of the complainant and his father in this case. I think the finding of guilt recorded by the learned trial Magistrate is quite in consonance with the material on record and is not found to be perverse in any manner. It calls for no interference by this court in this appeal.

5. The learned trial Magistrate has convicted the respondent - accused inter alia of the offence punishable under Section 324 of the IPC. The punishment prescribed thereunder is imprisonment of either description for a term which may extend to three years or with fine or with both. For some mysterious reasons, the learned trial Magistrate has chosen to impose the fine of Rs.75/- only for the offence of which the respondent - accused was found guilty. On the face of it, imposition of the sentence of fine of Rs.75/- for such offence looks absurd and ridiculous. It smacks of mockery and travesty of justice. It cannot be gainsaid that the offence punishable under Section 324 of the IPC is somewhat aggravated form of the offence punishable under Section 323 thereof. The more serious offence would certainly be the one punishable under Section 326 thereof. However, the offender guilty of the offence punishable under Section 324 of the IPC need not and cannot be lightly dealt with. One of the purposes of punishment is to have its deterrent effect. If offenders found guilty of somewhat serious offence of causing injuries with some sharp cutting instrument are dealt with in this lenient manner, the punishment will lose its deterrent effect. On the contrary, such offenders would be encouraged to indulge in repetition of such offences. It would be in the interests of the society if such offenders are dealt with quite seriously and severely keeping in mind the

nature of offence and injuries caused to the victims. It appears that the learned trial Magistrate has blissfully remained ignorant of this aspect of the case and has awarded a very lenient sentence of the fine of Rs.75/only which sentence cannot be said to be any sentence in the eyes of law.

6. The minimum sentence prescribed for the offence punishable under Section 135 (i) of the Act is four months and fine. It provides for imposition of less than the minimum sentence for reasons to be recorded in writing. The learned trial Magistrate has awarded no substantive sentence of imprisonment for the offence punishable under Section 135 (i) of the Act. He has awarded the sentence of fine of Rs.20/- only in default simple imprisonment for ten days for the said offence. No reasons are recorded for awarding less than the minimum sentence. This can be said to be just ridiculous. It cannot be gainsaid that provisions of the Act are designed for maintaining the law and order situation in the area. Any person defying, disregarding or disobeying or contravening the relevant provisions contained in the Act would be guilty of causing disturbance in the law and order situation. He has to be dealt with seriously and severely if he is found guilty thereof. The deterrent purpose of punishment would be lost if such offenders are dealt with lightly and leniently. Such lenient and light punishment would be looked down upon by the society. It might as well be the subject-matter of mockery and ridicule. This cannot be permitted to be done.

7. In view of my aforesaid discussion, I am of the opinion that the minimum substantive sentence prescribed for the offence punishable under Section 135 (i) of the Act deserves to be imposed though more than 14 years have rolled by since the date of the incident. The respondent - accused also deserves to be sentenced with the fine of Rs.1000/- (one thousand) for the offence punishable thereunder. The respondent - accused deserves to be awarded the punishment of fine of Rs.5000/- (five thousand) for the offence punishable under Section 324 of the IPC. In view of the fact that the substantive sentence is thought of for the offence punishable under Section 135 (i) of the Act, it is not desirable to award any substantive sentence for the offence punishable under Section 324 of the IPC .

8. In the result, this appeal is accepted. The order of conviction passed by the learned trial Magistrate is maintained. The order of sentence passed

by the learned trial Magistrate is modified by imposing the substantive sentence of simple imprisonment for four months for the offence punishable under Section 135 (i) of the Act and fine of Rs.1000/- (one thousand) in default simple imprisonment for one month more and fine of Rs.5000/- (five thousand) for the offence punishable under Section 324 of the IPC in default simple imprisonment for three months without imposing any substantive sentence therefor. A warrant for arrest of the respondent - accused is ordered to be issued.

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